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8                   UNITED STATES DISTRICT COURT  
9                   EASTERN DISTRICT OF CALIFORNIA

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11 HAMID KAZEROONI,

Case No. 2:20-cv-00463-TLN-DB

12                   Plaintiff,

13                   v.

**SUA SPONTE REMAND ORDER**

14 GENA TORRES,

15                   Defendant.

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17         This matter is before the Court pursuant to Defendant Gena Torres's ("Defendant") Notice  
18 of Removal and Motion to Proceed in Forma Pauperis. (ECF Nos. 1–2.) For the reasons set forth  
19 below, Defendant's Motion to Proceed in Forma Pauperis (ECF No. 2) is DENIED as moot, and  
20 the Court hereby REMANDS the action to the Superior Court of California, County of  
21 Sacramento, due to lack of subject matter jurisdiction.

22                   **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

23         On February 3, 2020, Plaintiff Hamid Kazerooni ("Plaintiff") brought an action for  
24 unlawful detainer against Defendant for possession of real property known as 210 Battlecreek  
25 Circle, Sacramento, California, 95835 ("the Property"). (ECF No. 1 at 9.) On March 2, 2020,  
26 Defendant filed a Notice of Removal removing this unlawful detainer action from the Sacramento  
27 County Superior Court. (ECF No. 1.)

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1           **II. STANDARD OF LAW**

2       28 U.S.C. § 1441 permits the removal to federal court of any civil action over which “the  
3 district courts of the United States have original jurisdiction.” 28 U.S.C. § 1441(a). “Removal is  
4 proper only if the court could have exercised jurisdiction over the action had it originally been  
5 filed in federal court.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987).

6       Courts “strictly construe the removal statute against removal jurisdiction,” and “the  
7 defendant always has the burden of establishing that removal is proper.” *Gaus v. Miles, Inc.*, 980  
8 F.2d 564, 566 (9th Cir. 1992) (per curiam). Furthermore, “[i]f the district court at any time  
9 determines that it lacks subject matter jurisdiction over the removed action, it must remedy the  
10 improvident grant of removal by remanding the action to state court.” *California ex rel. Lockyer*  
11 *v. Dynegy, Inc.*, 375 F.3d 831, 838, *as amended*, 387 F.3d 966 (9th Cir. 2004), *cert. denied* 544  
12 U.S. 974 (2005).

13       Federal question jurisdiction is set forth in 28 U.S.C. § 1331. *See* 28 U.S.C. § 1331. The  
14 “presence or absence of federal question jurisdiction is governed by the ‘well-pleaded complaint  
15 rule,’ which provides that federal jurisdiction exists only when a federal question is presented on  
16 the face of the plaintiff’s properly pleaded complaint.” *Caterpillar*, 482 U.S. at 386. Federal  
17 question jurisdiction therefore cannot be based on a defense, counterclaim, cross-claim, or third-  
18 party claim raising a federal question. *See Vaden v. Discover Bank*, 556 U.S. 49 (2009); *Hunter*  
19 *v. Philip Morris USA*, 582 F.3d 1039, 1042–43 (9th Cir. 2009).

20           **III. ANALYSIS**

21       Defendant removed this action on the basis of federal question jurisdiction. (ECF No. 1-1  
22 at 1.) Defendant argues that Plaintiff’s claim involves the federal Protecting Tenants at  
23 Foreclosure Act of 2009 (“PTFA”), 12 U.S.C. § 5220. (ECF No. 1 at 2–4, 8.) “[The PTFA]  
24 provides protections to tenants who reside in properties subject to foreclosure, including the  
25 requirement that a 90-day notice to vacate be given to bona fide tenants.” *Granite Ranch*  
26 *Opportunities, LLC v. Huaman*, No. 2:13-cv-1958-KJM-AC, 2013 WL 12121093, at \*1 (E.D.  
27 Cal. Sept. 23, 2013).

28       Despite Plaintiff’s assertion, it is clear that the Complaint itself contains only a single

1 claim for unlawful detainer. (ECF No. 1 at 9–11.) The instant Complaint therefore relies solely  
2 on California state law and does not state any claims under federal law. Based on the well-  
3 pleaded complaint rule as articulated above, removal cannot be based on a defense, counterclaim,  
4 cross-claim, or third-party claim raising a federal question. *Caterpillar Inc.*, 482 U.S. at 392; *see also Vaden*, 556 U.S. at 49; *Hunter v. Philip Morris USA*, 582 F.3d at 1042–43. Although  
5 Defendant asserts that the PTFA is “not a defense” but is instead “the entire basis for the action,”  
6 she is incorrect. (ECF No. 1 at 7.) “[D]efendant[’]s assertions of the ‘Protecting Tenants at  
7 Foreclosure Act’ are best characterized as defenses or potential counterclaims; neither of which  
8 are considered in evaluating whether a federal question appears on the face of a plaintiff’s  
9 complaint.” *First Northern Bank of Dixon v. Hatanaka*, No. 2:11-cv-02976-MCE-KJN, 2011 WL  
10 6328713, at \*4 (E.D. Cal. Dec. 16, 2011) (citation omitted). “[F]ederal district courts have held  
11 that a defense based on the Protecting Tenants at Foreclosure Act cannot serve as a basis for  
12 removal jurisdiction.” *Aurora Loan Servs., LLC v. Montoya*, No. 2:11-cv-2485-MCE-KJN, 2011  
13 WL 5508926, at \*4 (E.D. Cal. Nov. 9, 2011).

15 In sum, while Defendant seems to contend that Plaintiff has violated the PTFA, this  
16 assertion relates only to an affirmative defense or potential counterclaim, which cannot be  
17 considered in evaluating whether a federal question appears on the face of Plaintiff’s Complaint.  
18 *See Vaden*, 556 U.S. at 60–62. Because the Complaint indicates that the only cause of action is  
19 one for unlawful detainer, which arises solely under state law, this action does not arise under  
20 federal law. There being no apparent grounds for federal jurisdiction, it is appropriate to remand  
21 this case, *sua sponte*, for lack of federal subject matter jurisdiction. *See United Investors Life Ins.*  
22 *Co. v. Waddell & Reed Inc.*, 360 F.3d 960, 967 (9th Cir. 2004) (“[T]he district court ha[s] a duty  
23 to establish subject matter jurisdiction over the removed action *sua sponte*, whether the parties  
24 raised the issue or not.”).

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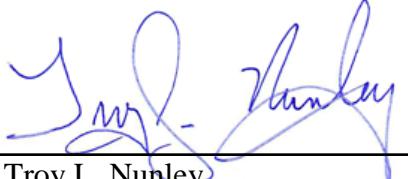
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1           **IV. CONCLUSION**

2           For the reasons stated above, Defendant's motion to proceed in forma pauperis (ECF No.  
3 2) is DENIED as moot, and the Court hereby REMANDS this action to the Superior Court of  
4 California, County of Sacramento.

5           IT IS SO ORDERED.

6           Dated: March 10, 2020

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9           Troy L. Nunley  
10           United States District Judge

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